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SIPDIS

DEPARTMENT FOR CA - JJACOBS; EUR/ERA - PCHASE; DHS FOR BTS
- SVERDERY; DOJ FOR CRIMINAL DIVISION - BSWARTZ; THE HAGUE
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SUBJECT: DEMARCHE RESPONSE: REVISED US VISIT POLICY AND
OTHER BORDER MANAGEMENT ISSUES

REF: (A) STATE 195507 (B) THE HAUGE 1775

Classified By: PRMOFF MARC J. MEZNAR. REASONS 1.4 (B) AND (D)

11. (C) Summary. The initial reaction from the European Commission on the FBI's enhanced access to US VISIT databases was low key. Major concerns focused on types of law enforcement activities for which the data would be used and about delays at ports of entry following changes on 9/30 and 12/31. The Commission urged the U.S. to step up its information campaign so that travelers from visa waiver countries are aware they will be fingerprinted at ports of entry. New Member States continue to press for a unified EU approach towards the U.S. visa waiver program and have indicated they will not agree to changes concerning the Schengen Agreement's solidarity mechanism. The recent U.S.-Poland bilateral agreement to screen passengers at the Warsaw airport has also fueled resentment in European circles. End Summary.

12. (U) On 9/14, PRMOFF delivered reftel talking points to Diederich Paalman at DG Justice and Home Affairs (JHA) regarding changes to the US VISIT program, including enhanced FBI access to the database. Paalman referred to the phone conversation between DHS DAS Verdery and JHA Director General Jonathan Faull, but said the Commission would prefer to react after it had a chance to read the revised privacy policy and related documents (available only after COB in Brussels that day).

US VISIT: Workloads of More Concern than Policy Changes

13. (C) On 9/16, PRMOFF met with JHA Director for Immigration, Asylum and Borders Jean Louis de Brouwer, JHA External Relations Head of Unit Lotte Knudsen, and JHA Biometrics/Privacy Policy Officer Silvia Kolligs for a more in depth discussion. De Brouwer expressed appreciation for efforts made by the USG to notify the Commission before changes were publicized. Reactions to the changes themselves were muted. De Brouwer had two basic questions which PRMOFF answered using the Q & A's included in reftel A: (a) what "enhanced" access meant and (b) how the information would be used by the FBI. De Brouwer pressed hardest on the second point. PRMOFF stressed, according to Question 11, that data would be used "to investigate crimes related to national security, immigration offenses and other major crimes, such as murder, rape, robbery, organized crime and drug trafficking." De Brouwer seemed satisfied that use would not extend to investigations regarding less serious types of offenses like civil matters.

14. (C) After making a pro-forma pitch about the importance of ensuring privacy under the new information sharing arrangements, de Brouwer focused his comments on upcoming changes, both on 9/30 and at the end of the year. Regarding new procedures to enroll VWP travelers in US VISIT as of 9/30, de Brouwer strongly urged the U.S. to intensify its information campaign to alert VWP travelers to the new requirements. "What you are doing is perfectly legitimate, but you need to explain it well (to the traveling public) in advance," he said. He predicted a spate of highly unfavorable press articles if certain travelers with strong privacy instincts -- or "opinion leaders" -- were unaware of changes at the border and made to surrender prints (or worse, be turned around at ports of entry).

15. (SBU) PRMOFF stressed that previous rollouts involving digital scans -- at consulates abroad and at POEs for those entering with visas -- had not resulted in significant public relations problems. To the contrary, the moves had a very high level of public acceptance. De Brouwer pointed out that with the vast increase in numbers exclusively involving travelers from developed countries (where privacy concerns are greatest), the dynamic could shift. Kolligs showed a US VISIT pamphlet she had received during her voluntary visitor program on biometrics and related privacy concerns, suggesting they be distributed at airline counters abroad for travelers headed to the U.S. from VWP countries. Those with strong objections could decide not to board and thus avoid

unpleasant turn-arounds.

16. (SBU) The second item of concern connected to 9/30 raised by de Brouwer was the expectation of long delays at ports of entry caused by increased US VISIT workloads. Kolligs said that in a briefing she had received from Cogent Incorporated, about 70,000 new biometric records are added to the US VISIT each day. Consequently, the response time has decreased from 15 seconds in March until 20 seconds today. PRMOff pointed out that even with this increase, the inspector at the port of entry would be using the response time to conduct an interview with the passenger in order to determine admissibility to the U.S. PRMOff predicted that after a brief period of adjustment to accommodate the increased number of passengers being enrolled in US VISIT, DHS would succeed in minimizing delays at POEs.

17. (U) De Brouwer also asked about workload management at land borders following the expansion of US VISIT at the end of the year. PRMOff explained that although US VISIT did not apply to U.S. citizens, most Canadians or Mexicans using the biometrically enabled border-crossing cards, there was still a need to plan well for these changes. Because the EU is intensely interested in the management of land borders (as it tries to figure out how to cope with its own new external frontier in the east), de Brouwer requested that the U.S. make a presentation on this theme at the upcoming CIREFI (Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration) meeting with the U.S. and Canada scheduled for 10/29 in Brussels.

VWP: Still Causing Angst

18. (C) De Brouwer used the meeting to discuss several related issues, particularly in light of the upcoming meetings in The Netherlands with Secretaries Ridge and Ashcroft. Regarding the visa waiver program, he said that "pressure is increasing every month" from the new Member States. De Brouwer reported that during an internal EU meeting of the SCIFA (Strategic Committee on Immigration, Frontiers and Asylum) group on 9/15, new members voiced firm opposition to the Commission's proposal on visa reciprocity which would take the teeth out of the Schengen agreement's "solidarity mechanism." He said Poland, Hungary and the Baltic states made it clear they would not agree to changes which would eliminate the possibility of automatic imposition of visas on countries like the U.S. that do not treat citizens of all Schengen states equally. Responding to a Commission suggestion that they "use it or lose it," the aggrieved states of Eastern Europe also made it clear they are not prepared to invoke the retaliatory mechanism for the time being. (Note. Meanwhile, the EU scored a small victory with New Zealand's decision to extend visa waiver equally to all Member States as of April 1, 2005 -- meaning Poland, Slovakia, Cyprus, and the Baltic states will no longer require visas after that date. End Note.)

19. (SBU) De Brouwer said that the Commission strongly supports the idea of the U.S. meeting as a group with the Member States not on VWP to review the technical criteria of the program (and, by doing so, send a political message that there is a certain path towards visa free status). He also mentioned the political significance of the U.S. meeting these countries as a group, instead of bilaterally. De Brouwer asked whether Secretary Ridge would make such an offer at his upcoming visit in The Hague, as he had heard from an anonymous source.

110. (U) In the same vein, he urged the U.S. to consider the Commission's counter-proposal to the U.S. idea of creating a working group at the expert level to discuss visa issues (reftel B). Instead of just looking at technical issues related to information sharing, he said this group could also discuss VWP and other areas of interest to the EU. PRMOff explained that VWP was more appropriate to senior level consultations which are already occurring on a regular basis.

Poland: Bilateral Agreement Resented

111. (C) De Brouwer also raised Poland's bilateral agreement with DHS/CBP for an "Immigration Advisory Program" at the Warsaw airport. He reported that the Czechs were furious at this perceived advantage given by the U.S. to Poland (which they felt would somehow enable Poland to qualify more quickly for VWP). The Czechs reportedly also complained about Poland's lack of solidarity by agreeing to such a deal. De Brouwer said the Commission finds itself in a "rather ambiguous" situation and inquired whether the U.S. would be seeking out more countries for bilateral agreements. PRMOff reviewed the context which led to the bilateral agreement with Poland, describing it as a re-packaging of existing

programs around the world (i.e., immigration liaison officers) to help local officials identify fraud and other problems before boarding. When asked about pre-clearance in Ireland, de Brouwer noted that Ireland was outside the Schengen area and thus could do as it pleased. He also said that the Netherlands might be considered in breach of the Schengen agreement for programs at Schiphol airport, but noted there was no written agreement and that the activities there could be considered experimental or a pilot project.

Comment

12. (C) The mild reaction on 9/16 regarding enhanced FBI access may not fully represent the Commission's feelings once the news circulates and more information becomes available to European interlocutors. De Brouwer was evidently more concerned with the internal deliberations of the SCIFA group and the pressures of the day (visa reciprocity, treatment of EU travelers at U.S. borders, etc.). Even de Brouwer's interest in our management of land borders represents a pressing problem in Europe: how to deal with communities that have thrived on cross border movements (i.e., between Poland and Ukraine, Slovenia and Croatia, etc.). Shortly after the meeting, USEU was contacted by a reporter asking about enhanced FBI access; although the reporter would not name her source, she mentioned it was a European official. In short, the Commission may take its concerns about tightened border procedures in the U.S. to the court of public opinion. Enhanced access to US VISIT will also certainly be raised during the visits of Secretaries Ridge and Ashcroft to The Netherlands.

MCKINLEY